



Battle Creek Zoning Board of Appeals

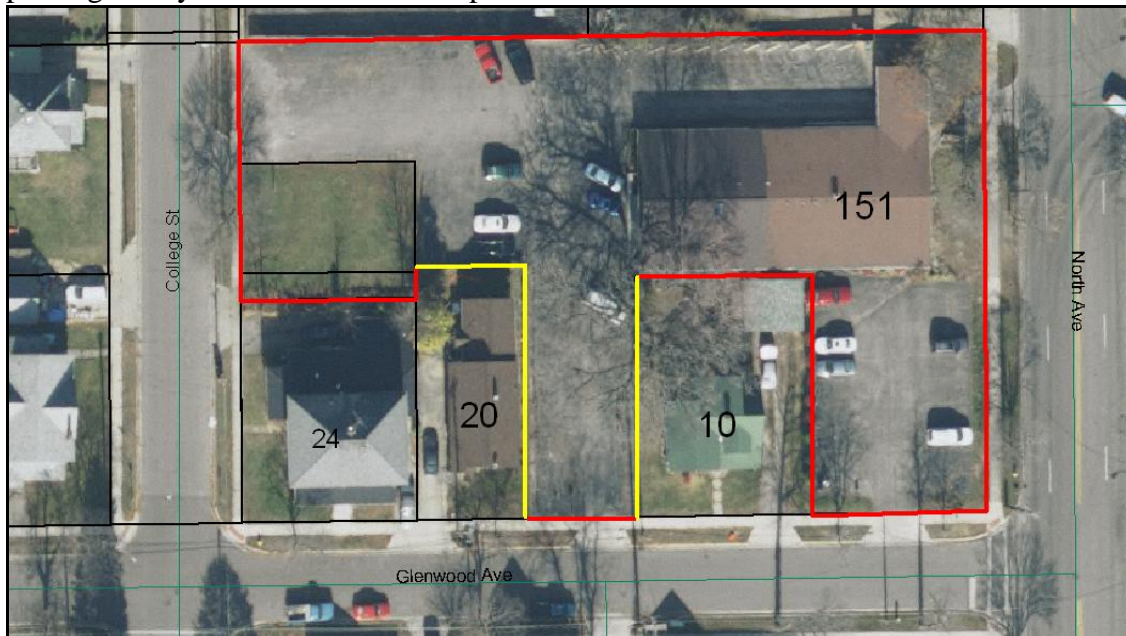
Staff Report

Meeting: November 12, 2013
Appeal #Z-05-13

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Date: November 4, 2013
Subject: Petition for a dimensional variance (Z-05-13) to permit the construction of a parking lot, waiving the 10' buffer strip requirement between parking lots and residential properties.

Summary

This report addresses a petition from Hurley & Stewart LLC, on behalf of Andert Properties LLC, seeking approval of a Dimensional Variance (Z-05-13), to waive the 10' buffer requirement between parking areas and the residential properties at 10 Glenwood and 20 Glenwood to reconstruct/expand a parking lot for Psychological Consultants of Michigan located at 151 North Avenue. The variance is being requested for the portions of the property marked in yellow on the following aerial with the remainder of the property marked in red. Plans showing the existing paving conditions and proposed parking lot layout is included in the packet of material submitted.



Background/Project Information

The request is to reconstruct the parking area at 151 North Avenue for Psychological Consultants of Michigan. The current parking areas west and south of the building do not conform to the requirements of the planning and zoning code with respect to proper buffering between parking areas and residential properties. Currently, there is no buffer (0') between the parking areas and residential properties along Glenwood Avenue. These parking areas are considered legal nonconforming and may

continue into perpetuity as such including maintenance (and resurfacing) of the nonconforming lots. The request is to completely tear out the existing parking surfaces to the west and southwest of the building, and by doing so, negating the nonconforming status of the parking lots. In order completely tear out the existing surfaces and replace them with new parking lots, the new surface lots must come into compliance with the planning and zoning code including proper buffering between the existing residential properties for which the applicant is asking this particular variance for. In addition to the parking lot reconstruction the proposed project includes the elimination of the drive aisle to the north of the building and replacing it with landscaping and an ADA ramp.

Legal Description

PID 5240-00-090-0-MC CAMLYS ADD E 1/2 OF LOT 59, ALL OF LOTS 60 & 61, N 46 FT OF E 66 FT OF LOT 62, EXC S 95.6 FT OF W 1/2 OF LOT 61 (5240-00-089-0, 5240-00-096-0, & NLY PART OF 5240-00-093-0 ADDED TO THIS PARCEL IN '97)

PID 5240-00-095-0-MC CAMLYS ADD E 66 FT OF LOT 62, EXC S 94 FT & N 46 FT THEREOF

PID 5240-00-094-1-S 10 FT OF THE FOLLOWING: E 66 FT OF LOT 62 , EXC N 46 FT & EXC S 84 FT THEREOF

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, October 24, 2013 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on October 22, 2013 to 90 property owners and occupants located within 300 feet of the subject parcel. Planning staff has received one letter in opposition to this request from the property owner at 24-26 Glenwood Street.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 states:

b) The Board shall have the authority to grant the following variations:

(1) Nonuse. If there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125-3101 et seq.; and

(c) Variance Standards. In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the applicant has met all of the following conditions as set out for the specific type of variance requested:

(1) Nonuse (dimensional) Variances:

A. When it can be shown that a practical difficulty would, in fact, exist if the strict non-use requirements of this zoning ordinance (e.g., lot area, width, setbacks, building height, etc.) were applied to a specific building project, the Board may grant a variance from these requirements. The

practical difficulty from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return.

B. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant. If the parcel of land could be reasonably built upon in conformance with the requirements of this zoning ordinance by simply relocating or redesigning the structure(s), then a variance shall not be granted.

C. A variance shall not be granted when it will alter or conflict with the intent of this Ordinance considering the public benefits intended to be secured by this Zoning Code and the rights of others whose property would be affected by the allowance of the variance.

D. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

Analysis and Recommendation

Staff has reviewed the application and finds that it meets the requirements for submittal and is considered complete. The Appellant is requesting a variance from the 10' buffer requirement between parking areas and residential properties that would authorize the construction of new parking lots for the business at 151 North Avenue. The Appellant has stated in the supporting material that "the shape of the lot provides an existing drive aisle extending southwards to College St which, if required to provide a 10' buffer, would have to be eliminated and the parking lot would be unable to provide the required number of parking spaces". Furthermore, the Appellant states that if the project is required to comply with code requirements all proposed green-space and landscaping would have to be eliminated.

According to information supplied by the Appellant, the building occupies 4,905 square feet of professional offices / medical clinics. Based on the requirement of 1 parking space for every 200 square feet of building area, 25 parking spaces are required per code. Per the drawing, the Appellant is proposing approximately 46 parking spaces including the lot at the corner of Glenwood and North Ave. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report. While we appreciate the proposed improvements to property by the business owner, there is a need for those improvements to adhere to zoning requirements which are intended to reduce and mitigate potential conflicts between commercial and residential properties. As mentioned earlier in this report, a site plan of existing conditions and for the proposed parking lot is provided.



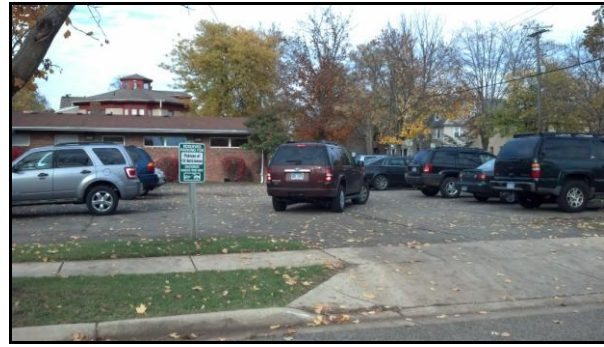
Looking east from College



Looking southeast from College



Looking north between residences



Looking north at “existing visitor parking area”

Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we do not believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals deny the Dimensional Variance (Z-05-13) based on the following findings contained in this staff report.

- A) Staff finds that practical difficulty does not in fact exist if the strict requirement of the Ordinance is applied to this specific building (parking) project and that the Board is authorized to deny the variance in this case. The practical difficulty from failure to grant the variance will include substantially more than a mere inconvenience in this case. From the information submitted by the Appellant, the building occupies 4,905 square feet of space dedicated to professional offices / medical clinics. The ordinance requires 1 parking space for every 200 square feet of building area or 25 parking spaces in this case. The Applicant is showing 30 proposed parking spaces associated with the new lot, however, the Applicant does not include the available number of spaces in the area labeled “existing visitor parking area” that we conservatively estimate at 16 spaces.
- B) Staff believes that the practical difficulty is not exceptional and peculiar to the subject parcel and the conditions associated with the property generally exist throughout the City. We believe the lot could be reconfigured or made smaller, therefore complying with ordinance requirements for buffering and the number of parking spaces required for the business at 151 North Avenue.
- C) Staff believes that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised in that the required buffering will be eliminated between parking areas and residential properties.
- D) Staff believes that the variance requested exceeds the minimum necessary to provide relief from any stated practical difficulty in that the intent of this request is to provide maximum parking spaces in the area west of the building.

Attachments:

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-05-13)
2. Site plan of proposed parking facility and existing conditions
3. A letter from the property owner authorizing Hurley & Stewart to act on their behalf
4. An email in opposition from Latosha Potter, 24-26 Glenwood